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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 REALTIME DATA LLC d/b/a IXO,

18 Plaintiff,

19 v.

20 SILVER PEAK SYSTEMS, INC.,

21 Defendant.
22

Case No.: 4:17-cv-02373-PJH

**DEFENDANT SILVER PEAK'S
ADMINISTRATIVE MOTION TO SET
HEARING DATE**

Dept: Courtroom 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

1 Pursuant to Civil Local Rule 7-11, Defendant Silver Peak Systems, Inc. (“Silver Peak”)
2 hereby moves for administrative relief and requests that the Court set a hearing date for Silver
3 Peak’s Motion to Stay Pending Inter Partes Reviews (Dkt. No. 76).

4 Plaintiff Realtime Data LLC d/b/a IXO (“Realtime”) filed this suit on February 26, 2016
5 for patent infringement against Silver Peak, and against Hewlett Packard Enterprise Co. and HP
6 Enterprise Services, LLC (collectively, “HP”), in the U.S. District Court for the Eastern District
7 of Texas. Dkt. No. 1. Realtime asserted claims against Silver Peak on five patents: U.S. Patent
8 Nos. 7,415,530; 8,643,513; 9,116,908; 9,054,728; and 7,161,506. *Id.* On September 9, 2016,
9 Silver Peak moved to sever due to improper joinder under the America Invents Act (“AIA”), 35
10 U.S.C. § 299, and to transfer venue pursuant to 28 U.S.C. § 1404. Dkt. No. 55. On November
11 21, 2016, Silver Peak and HP jointly moved to stay the case pending *inter partes* review (“IPR”)
12 of the patents-in-suit. Dkt. No. 76.

13 On February 3, 2017, the Eastern District of Texas granted Silver Peak’s motion to sever
14 and transfer venue to the Northern District of California. Dkt. No. 88. On that same day, the
15 Eastern District of Texas also granted the Defendants’ motion to stay pending IPR as to HP, but
16 deferred ruling on the stay as to Silver Peak in light of its order severing and transferring Silver
17 Peak’s case to this Court. Dkt. No. 89. Silver Peak’s Motion to Stay, therefore, remains pending.
18 The case file was transferred to the Northern District of California on April 27, 2017. Dkt. No.
19 91. The initial case management conference before this Court is set for August 17, 2017.

20 In the meantime, the Patent Trial and Appeals Board (PTAB) has instituted IPRs on all of
21 the patents-in-suit. Decl. of Kunyu Ching in Support of Silver Peak’s Admin. Mot. to Set
22 Hearing Date ¶ 3. The IPRs discussed in Silver Peak’s Motion to Stay and their relevant
23 schedules are shown below:

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Asserted Patent	IPR No.	Claims in IPR	Date Filed/ Date Instituted	Expected Decision Date ¹
U.S. Patent No. 7,415,530	IPR2016-00972	1-5, 9-12, 14, 18, 19, 24	Apr. 29, 2016 Nov. 1, 2016	Nov. 1, 2017
	IPR2016-01671	1-5, 9-12, 14, 18, 19, 24	Sept. 6, 2016 March 8, 2017	March 8, 2018
U.S. Patent No. 8,643,513	IPR2016-00374	1, 2, 4, 6, 11-16, 18- 20, 22	Dec. 28, 2015 Jun. 27, 2016	June 27, 2017
	IPR2016-00978	1-4, 6, 10- 16, 18-20, 22	Apr. 29, 2016 Nov. 1, 2016	Nov. 1, 2017
U.S. Patent No. 9,116,908	IPR2016-01002	1, 2, 4-6, 9, 11, 21, 22, 24, 25	May 5, 2016 Nov. 2, 2016	Nov. 2, 2017
	IPR2016-01672	1, 2, 4-6, 9, 11, 21, 22, 24, 25	Sept. 6, 2016 March 7, 2017	March 8, 2018
U.S. Patent No. 9,054,728	IPR2017-00179	1-10, 15, 20, 24	Nov. 14, 2016 May 30, 2017	May 30, 2018
U.S. Patent No. 7,161,506	IPR2017-00176	104, 105	Nov. 14, 2016 May 30, 2017	May 30, 2018

Id.

Silver Peak is identically situated as the defendants to whom the Eastern District of Texas granted a stay—including HP, from whom Silver Peak’s case was severed. No claim construction hearing has yet taken place. Despite these facts, Realtime has not responded to Silver Peak’s repeated requests to stipulate to a stay. *Id.* ¶¶ 4-7.

Silver Peak thus requests a hearing to the extent necessary to assist the Court in answering any remaining questions it may have concerning Silver Peak’s Motion to Stay. A hearing on this matter could also result in more efficient adjudication of this case and more efficient use of the Court’s time and resources by obviating the need for a case management conference.

For the foregoing reasons, Silver Peak respectfully requests the Court to set a hearing date for Silver Peak’s Motion to Stay.

Dated: June 28, 2017

FENWICK & WEST LLP

By: /s/ Michael J. Sacksteder
Michael J. Sacksteder

Attorneys for SILVER PEAK SYSTEMS, INC.

¹ Under the AIA, the PTAB must provide final written decisions on IPRs within a year of institution. 37 C.F.R. §§ 42.100(c).